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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,690	12/08/2003	Michael Miller	1194.1101101	5711

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EXAMINER

JAWORSKI, FRANCIS J

ART UNIT PAPER NUMBER

3768

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/730,690	Applicant(s) MILLER	
	Examiner Jaworski Francis J.	Art Unit 3768	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 13-26 and 28-55 is/are pending in the application.
4a) Of the above claim(s) 1-11, 13-26, and 28 - 48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 49-55 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Applicant's election of claims 49 – 55 with traverse is noted. The restriction requirement was reviewed and it is considered to be proper by the examiner insofar as the manner of claiming embraces catheters and endoscopes as well as inter alia endotracheal tubes there is a large body of art associated with actuator features in association with internally placed tubular members.

Therefore the restriction requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 49 –53 and 55 are rejected under 35 U.S.C. 102(a) as being obvious based on Frass et al (US5499625) in view of Patacsil et al(US6132379).

Frass et al teaches an endotracheal tube having a proximal pharyngeal cuff 22 and distal actuator – encircling cuff 18 fluidically coupled to the proximal end of the tubular device and suggests device placement under ultrasonography per col. 1 top portion, however Frass et al does not literally show an extracorporeal transducer and imaging means. However it would have been obvious in view of Patacsil et al col. 9

lines 48 – 55 to effect such endotracheal device placement using a transducer array extracorporeally placed near the traches.

Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over Frass et al in view of Patacsil et al as applied to claim 49 above, and further in view of Lowe et al (US5775328) since it was known in the latter to visualize structure adjacent and around an endotracheal tube by using Doppler imaging.

The following art is cited as of interest:

US5765568 – Dual balloons 56, 60 on a venous/arterial catheter with acoustic transmissive saline coupling and ultrasound image positioning.

US5411027 – Dual catheter-mounted isolation balloons 14, 15 having physiologic saline inflation fluid such that ultrasound imager 1 – 7 can monitor at least the initial placement.

US6287290 – Two or more endotracheal tube balloons 122, 132 with col. 3 discussion of saline use since ultrasound both monitors and treats the regional lung pathology.

US6253770 Acker – Dual catheter balloons Figs. 1F and 1G with acoustic or ultrasonic sensor position-locating use described in cols. 15 – 16 bridging and saline advocated in col. 7 for a positive actuation response.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

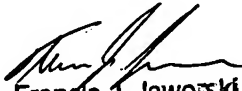
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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Jaworski Francis J. at telephone number 571-272-4738.

FJJ:fjj

091606


Francis J. Jaworski
Primary Examiner